IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/09/2003

CORAM

THE HONOURABLE Mr. JUSTICE V. KANAGARAJ

Crl.O.P.No.30135 of 2003
and
Crl.M.P.No.8349 of 2003

1. Mrs. Molly Abraham
2. Thomas Abraham
3. Prize Abraham .... Petitioners

-Vs-

State represented by the
Inspector of Police
Central Crime Branch Team VI
Office of the Commissioner of Police
Egmore, Chennai-8. .... Respondent

Criminal Original Petition filed under Section 482 Criminal Procedure Code for the grant of relief as stated therein.

For Petitioner : Mr. M. Ravindran, S.C.
For Mr. S.B.s. Raman & Associates

For Respondent : Mr. V. Jayaprakash Narayanan
Govt. Advocate (Crl. Side)

:O R D E R

Petitioners are three in number, the first petitioner being the mother and the second and third petitioners her sons and they have come forward to file the above Criminal Original Petition praying to direct the respondent not to harass the petitioners under the guise of investigation or interfere with the peaceful possession and enjoyment of the petitioners' property bearing No.9A, III Street, Dr.Subbaroya Nagar, Kodambakkam, Chennai-600 024 having a total extent of 24 grounds 1390 sq.ft. except by due process of an order from a competent Civil court.

2. The case of the petitioners is that the first petitioner's husband one Mr.A.G.Abraham has purchased the said property from one Selva Saroja on payment of the entire agreed sale consideration with her for herself and as Managing Director of M/s.T.P.Sokkalal Ram Sait Factory P. Ltd. and required to execute a sale deed conveying the said property to him, but, in a

piquant situation met with by the said A.G. Abraham, he was not able to get the registration done in his name; that the entire extent of 24 grounds 1390 sq.ft. is enclosed with the compound wall put up by the said A.G. Abraham right from the year 198 5 further constructing their residential house in a portion of the said property and making use of the remaining property for their business run under the name and style of York Demolitions and the first petitioner's husband A.G.Abraham was in physical possession and enjoyment of the said properties till his death.

3. Giving the entire description of the said property, the petitioners would further submit that on the death of the said Smt. Selva Saroja on 30.11.1994 and on the death of Mr.A.G. Abraham on 01.12.1997, the legal heirs of the deceased Selva Saroja had taken over the management of T.P.Sokkalal Ram Sait Factory P. Ltd. and taking advantage of the non-execution of the sale deed in spite of the entire sale consideration having been received by the deceased Selva Saroja still they negotiate with the petitioners for additional payment or to surrender a portion of the property even though they are quite aware of the interest of the petitioners in the suit property.

4. The petitioners would further submit that two suits have been filed by the legal heirs of the said Selva Saroja, one collusive suit in O.S.No.4010 of 1999 on the file of the VII Additional Judge, City Civil Court, Chennai instituted against Mr. Jacob George, who is the brother of the deceased Mr.A.G. Abraham, even though the said person has no personal interest in the suit property; that immediately on coming to know of the said suit, the petitioners have also in their capacity as the legal heirs of Mr. A.G. Abraham and being in possession and enjoyment of the property besides being the owners of the property, have filed applications in I.A.Nos.14765 of 2002, 14763 of 2002 and 14764 of 2002 respectively for impleadment, for preservation of status quo and for appointment of a guardian and the said suit is being well contested by the petitioners also.

5. While such being the state of affairs, a mutual agreement was also entered into between the petitioners and one T.P.S.H.Prasanna, daughter of T.P.S.H.Selva Saroja, thereby agreeing to part with the portion of the property admeasuring 6 grounds and 710 sq.ft. to be conveyed in favour of the petitioners on a regular deed of sale and on such execution of the sale deed, the petitioners to surrender the remaining extent of the property to the legal heirs of late Selva Saroja; that in the meantime, yet another suit in O.S.No.1061 of 2003 on the file of the XI Assistant Judge, City Civil Court, Chennai has been instituted by Mr.Jacob George praying for a permanent injunction restraining the petitioners from parting with the possession of the property and the legal heirs of Tmt.T.P.S.H.Selva Saroja from taking possession of the property and an interim order directing the petitioners not to part with possession has also been granted as on 27.12.2002 by the said Court; that since the compromise required the other party to consider the same in the Board and to pass resolutions and for causing production of the said resolution, pursuant to the sale of the agreed portion of the petitioners, three weeks time was allowed by mutual understanding and the said resolution is yet to be produced; that in the meantime, Smt. T.P.S.H. Prasanna,

daughter of late Smt.Selva Saroja has renewed her effort to implicate the petitioners in some false criminal complaint by the use of police force to secure possession of the entire property with intent to avoid the Memorandum of Compromise entered into between the genuine parties on 24.2.2003 has resorted to the respondent with a false complaint, based on which the respondent has caused the notice in question issued under Section 160 and 91 Criminal Procedure Code calling for the petitioners to appear before the respondent relating to the said complaint said to be under investigation of the respondent and to examine the petitioners regarding the same has directed to appear before him on 24.08.2003 at 10.00 a.m. resenting which the petitioners have come forward to file the above Criminal Original Petition seeking a direction of this Court in the manner extracted supra.

6. Today, when the above Criminal Original Petition was taken up for consideration in the presence of the learned senior counsel appearing on behalf of the petitioners and the learned Government Advocate representing the respondent contra, what gathered from all the sources particularly from the materials placed on record and upon hearing the learned counsel for both is that by lodging the complaint, the complainant before the respondent has attempted to give a criminal colour for a case purely civil in nature particularly in view of the fact that two suits and many applications filed therein are pending before the Civil Court. Needless to mention that it is a property dispute by rival claimants since the original parties, who transacted the entire sale business have passed away, the legal heirs without proper guidance have entered into the civil dispute and in all respects, the solution lies only before the Civil Court as parties have rightly resorted to. Whileso, under the pretext of a complaint lodged by the said T.P.S.H. Prasanna, the respondent has issued notice and therefore, being alarmed by the same and seeking protection against frivolous criminal proceedings, it is undesirable in the context of the facts and circumstances of the case, the

petitioners have resorted to file the above Criminal Original Petition for fear that the respondent should not, under pretext of the said complaint, ma ke inroads nor cause hindrance initiating a criminal proceeding against them.

7. Of course, the very notice caused by the respondent on the petitioners, itself is specific to the effect that only in a case investigated by the police such a notice under Section 160 and 91 Criminal Procedure Code could be issued and in fact in a case registered and investigated into, the police are at liberty to summon any person under these provisions, but not on a mere complaint received. It is too much on the part of the respondent to have travelled to issue a notice of that kind, which in the circumstance of the case could only be construed as a threatening measure, as though a cognizable offence has been committed on the part of the petitioners and the same is not only undesirable but unwarranted as well. Unless a case is registered, the police cannot gain the authority to investigate into a subject and unless the matter is under the respondent's investigation, no such notice under Section 160 or 91 of the Criminal Procedure Code could be issued and therefore, it is enough if it is ascertained that such a notice could be issued only in a definite case registered and taken up for investigation and not otherwise. Since it is the basic dictum of law that the law itself is set

on motion only by registering the first information report and in any manner any act done without registering a case is only bereft of the authority of law. It is too much on the part of the respondent to have caused the notice and therefore not only the prayer of the petitioners is liable to be answered in the affirmative, but also the notice sent to the petitioners calling for them to appear before the respondent on 24.8.2003, besides having already become infructuous, also becomes liable to be dismissed and hence the following order.

In result,
i) for all the above discussions held, the above Criminal original Petition succeeds directing the respondent not to harass the petitioners under the guise of investigation and not to cause interference with the petitioners' peaceful possession and enjoyment of the property bearing No.9A III Street, Dr. Subbaroya Nagar, Kodambakkam, Chennai 600 024 in the entire extent of 24 grounds and 1390 sq.ft. except by due process of law.

ii) The notice issued under Sections 160 and 91 of Criminal Procedure Code dated 23.08.2003 calling for the petitioners to appear before the respondent on 24.08.2003 besides becoming infructuous, also is quashed specifically since being irregular and not in adherence with law.

iii) Consequently, Crl.M.P.No.8349 of 2003 is closed.

Index:Yes
Internet:Yes

sl

To

1. Inspector of Police
Central Crime Branch Team VI
Office of the Commissioner of Police
Egmore, Chennai 8.

2. The Public Prosecutor,
High Court, Madras.